

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-501. Illegal Drug Operations Site Reporting and Decontamination Act, Contesting an Initial Order or Notice.**

**R311-501-1. Objective, Scope and Authority.**

(a) Objective. The rules outline a process to contest a decision by the Executive Secretary to deny an application submitted under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, or revoke a Certificate issued under R311-500-6.

(b) Scope. These rules apply to proceedings under Title 19, Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act, Subsection 906(2) (Decontamination Specialist Certification and Revocation).

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

**R311-501-2. Orders, Notices and Other Decisions by the Executive Secretary.**

(a) The initial order and notice described in R311-500-9 shall be issued by the Executive Secretary.

(b) An initial order or notice shall become final in 30 days unless contested as described in R311-501-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.

**R311-501-3. Contesting an Initial Order or Notice Issued by the Executive Secretary.**

(a) The validity of an initial order or notice described in R311-500-9 may be contested by filing a written Request for Agency Action with the Board:

Solid and Hazardous Waste Control Board

Division of Solid and Hazardous Waste

288 North 1460 West

PO Box 144880

Salt Lake City, Utah 84114-4880.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice.

(c) Notice of the time and place for a hearing shall be provided in the response to a request for Agency Action, or shall be provided promptly after the hearing is scheduled.

(d) A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA.

**R311-501-4. Parties and Intervention.**

(a) The following persons are Parties to a proceeding governed by this Rule:

(1) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by order of the Executive Secretary;

(2) The Executive Secretary; and

(3) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under R311-501-4 (d).

(b) In a proceeding requested by the person to whom an initial order or notice of violation is directed, that person shall be the Petitioner and the Executive Secretary shall be the Respondent.

(c) In a proceeding requested by a person requesting intervention, the Intervenor shall be the Petitioner, provided that Intervention is granted, and the Executive Secretary and the person to whom an initial order or notice of violation is directed shall be the Respondents.

(d) A non-party may request intervention under Section 63-46b-9 of UAPA for the purpose of filing a Request for Agency Action, and may simultaneously file a Request for Agency Action. Requests for Intervention and Agency Action must be received by the Board for filing as provided in R311-501-3.2 within 30 days of the date of the challenged order or notice.

(e) Any Party may, within 20 days or such earlier time as established by the Presiding Officer(s), respond to a Request for Intervention. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

**R311-501-5. Conduct of Proceedings.**

(a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:

(1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member or Department employee.

(c) Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R311-501-7 regarding orders of Presiding Officers.

(d) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:

(1) An order or notice revoking a certification;

(2) A notice denying an application; or

(3) A consent order.

(e) The Board may convert proceedings, which are designated to be formal to informal, and proceedings, which are designated as informal to formal, if conversion is in

the public interest and rights of all parties are not unfairly prejudiced. See Section 63-46b-4(3) of UAPA.

(f) The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

(g) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.

(1) Response briefs may not be filed unless permitted by the Presiding Officer(s).

(h) Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in subparagraph (i). If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.

(i) The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(j) Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under subparagraph (i). The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(k) Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.

(l) All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

(m) The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.

### **R311-501-6. Hearings.**

(a) The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.

(b) Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.

(c) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to

the agency to enable the Presiding Officer to refer to the transcript in drafting the proposed order for the Board.

**R311-501-7. Orders.**

(a) Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.

(b) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.

(c) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record, which support the comments.

(d) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.

(e) The Board may modify this procedure with notice to all Parties.

(f) An order shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i) of UAPA.

**R311-501-8. Stays of Orders.**

(a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.

(b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:

(1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;

(2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;

(3) The Stay, if issued, would not be adverse to the public interest; and

(4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s).

(c) The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of R311-501-8(b) are met.

**R311-501-9. Reconsideration.**

(a) No agency review under Section 63-46b-12 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63-46b-13 of UAPA.

**R311-501-10. Disqualification of Presiding Officer(s).**

(a) A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:

(1) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(A) Is a party to the proceeding, or an officer, director, or trustee of a Party;

(B) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;

(C) Knows that he/she has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;

(D) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or

(E) Is likely to be a material witness in the proceeding.

(b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.

(c) A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.

(d) Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R311-501-3.

(e) Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code Ann., are not governed by R311-501. See R305-1, U.A.C.

**KEY: meth lab certification revocation**

**2005**

**19-6-901 et seq.**

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